

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q67666

Stefaan Jozef DE CNODDER, et al.

Appln. No.: 10/026,690

Group Art Unit: 2619

Confirmation No.: 9306

Examiner: Anthony M SOL

Filed: December 27, 2001

For: MARKER DEVICE AND RELATED METHOD

**REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41**

**MAIL STOP APPEAL BRIEF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.41, Appellant respectfully submits this Reply Brief in response to the Examiner's Answer dated September 3, 2008. Entry of this Reply Brief is respectfully requested.

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**STATUS OF CLAIMS**

Claims 1-16 are all the claims pending in the application and the subject of this appeal. Claims 1-3, 5-10, and 12-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Troxel (U.S. Patent No. 6,147,970) in view of Wang et al. (U.S. Patent No. 6,748,435, hereafter “Wang”). Claims 4 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Troxel in view of Wang and further in view of Chang et al. (U.S. patent No. 5,367,523, hereafter “Chang”).

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

I. Rejection of claims 1-3, 5-10, and 12-16 under 35 U.S.C. § 103(a) as being unpatentable over Troxel in view of Wang et al.

II. Rejection of claims 4 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Troxel in view of Wang and further in view of Chang et al.

**ARGUMENT**

In addition to the arguments set forth in the Appeal Brief filed on June 23, 2008, Appellant responds to certain points made in the Examiner's Answer as follows:

As noted in the Appeal Brief, Appellant submitted that there is simply no teaching or suggestion in Troxel of the feature "if said actual value of said traffic reservation parameter exceeds said threshold value for said traffic reservation parameter, determining said packet marking of and marking each of said packets based on said actual value of said traffic reservation parameter, and if said actual value of said traffic reservation parameter is below said threshold value for said traffic reservation parameter, determining said packet marking of and marking each of said packets based on a pre-assigned priority of the packet", as recited in independent claim 1 and analogous independent claims 8 and 16.

According to this aspect of the present invention, when an IP packet is received, the level of tokens in token buckets are checked, and if the levels are found to be below a threshold value, a pre-assigned priority of the packet is considered in determining a marking of each of the packets (see for example, page 5 of the original specification). However, if the actual value of the tokens in the token buckets rises above the threshold value, the packets are marked based on the actual value of the tokens in the bucket, and the pre-assigned priority of the packets is not considered (see for example, pages 5-6 of the original specification).

In the Appeal Brief, Appellant submitted that Troxel (which the Examiner cites as allegedly teaching this aspect of the claims), merely discloses that when either high priority or

low priority packets are below a threshold, the packets are marked as non-conforming and dropped. Appellant submitted that Troxel does not teach or suggest that if the actual value of the traffic reservation parameter exceeds the threshold value for said traffic reservation parameter, determining the packet marking of and marking each of said packets based on the actual value of the traffic reservation parameter, and if the actual value of the traffic reservation parameter is below the threshold value for the traffic reservation parameter, determining the packet marking of and marking each of the packets based on a pre-assigned priority of the packet, as required by the claims.

The Examiner now appears to assert that the claimed feature “if said actual value of said traffic reservation parameter is below said threshold value for said traffic reservation parameter, determining said packet marking of and marking each of said packets based on a pre-assigned priority of the packet”, as recited in independent claim 1 and analogous independent claims 8 and 16, now allegedly reads on the teachings in column 20, lines 46-55 of Troxel. Appellant respectfully disagrees with the Examiner’s position.

Troxel discloses that high priority packets are compared (based on the number of tokens required to pass the packet) to the direct value of a token counter 90. Low priority packets are compared to the value of the token counter 90 minus a normal priority threshold value 94. When either type of packet is below the compared value of the tokens in the token bucket (that is, there are not enough tokens available to send the packet), it is marked as non-conforming, and may be dropped.

Accordingly, contrary to the assertions of the Examiner, Troxel does not teach or suggest that the packets are marked based on a pre-assigned priority of the packets. The packets of Troxel are marked non conforming based on whether they are below a compared value of the token counter, and not based on a pre-assigned priority of the packet. That is, even if one assumes *arguendo*, that the pre-assigned priority of the packets of Troxel are “low priority” and “high priority”, the packets are not marked “low priority” or “high priority” based on the value of the counter 90. Both types of packets are marked as “non-conforming”, therefore, the marking is changed.

In the present invention, if the levels of the tokens are below a threshold value, and an incoming packet is marked “red”, the marking is not changed. The packet will leave the marking device as a red packet. Similarly, if the incoming packet is marked yellow, a determination part takes out a number of yellow tokens from the bucket corresponding to the length of the packet and the marking part leaves the packet as it is (a yellow packet). That is, the packets are marked based on their pre-assigned priorities.

Accordingly, Appellant respectfully submits that there is no teaching or suggestion in Troxel of the feature “if said actual value of said traffic reservation parameter is below said threshold value for said traffic reservation parameter, determining said packet marking of and marking each of said packets based on a pre-assigned priority of the packet”, as recited in independent claim 1 and analogous independent claims 8 and 16.

For these reasons, Appellant respectfully submits that the Examiner § 103 rejection of claims 1, 8 and 16 is improper, and respectfully submits that the rejection of claims 1-16 should be reversed.

In view of the foregoing, Appellant respectfully submits that the rejection of claims 1-16 should be reversed.

**CONCLUSION**

For the above reasons as well as the reasons set forth in Appeal Brief, Appellant respectfully requests that the Board reverse the Examiner's rejections of all claims on Appeal. An early and favorable decision on the merits of this Appeal is respectfully requested.

Respectfully submitted,

/Mark E. Wallerson/

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WASHINGTON OFFICE

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CUSTOMER NUMBER

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